In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1725

PENNSYLVANIA TRANSFER COMPANY OF PHILADELPHIA, INC., PETITIONER

v.

ALFRED L. WHINSTON, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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1. Petitioner instituted this action in the United States District Court for the Eastern District of Pennsylvania to enjoin the District Director of Internal Revenue from collecting taxes for the years 1951 through 1957, contending, *inter alia,* that the waivers of the statute of limitations with respect to those years mutually signed by its officers and Internal Revenue agents were invalid because the District Director lacked authority under Section 6502 of the Internal Revenue Code of 1954, 26 U.S.C. 6502, to delegate responsibility for signing such waivers. The district court held (Pet. App. 19-25) that the District Director has authority to delegate responsibility for executing waivers, that the waivers were therefore valid and the years in question still open for assessment, and that petitioner's suit was accordingly

barred by the anti-injunction statute, Section 7421 of the Code. The court of appeals affirmed *per curiam* (Pet. App. 17-18). Petitioner's only argument here concerns the authority of the District Director to delegate responsibility for execution of waivers of the statute of limitations.[1]

2. Section 6502(a)(2) provides that waivers are to be signed by the "Secretary or his delegate." The Secretary by regulation has delegated authority to sign to the District Directors. Treasury Regulations on Procedure and Administration, Section 301.6502-1(a)(2)(i), 26 C.F.R. 301.6502-1(a)(2)(i). However, Treasury Decision 6118, 1955-1 Cum. Bull. 698, 718-719, further provides that whenever any function is delegated to a District Director, he in turn has authority to redelegate the responsibility for such function to any officer or employee performing services under his supervision and control. Moreover, this authority to redelegate is explicitly provided with regard to the signing of waivers. See Delegation Order No. 42, 1956-2 Cum. Bull. 1378. This system accords with the practical necessities of administration.

Contrary to petitioner's claim, the decision below creates no conflict among the courts of appeals. Petitioner cites *Lesser* v. *United States*, 368 F. 2d 306 (C.A. 2), and *Rohde* v. *United States*, 415 F. 2d 695 (C.A. 9), as being in conflict with the court below, but *Lesser* expressly upheld a waiver signed by an Internal Revenue agent whereas *Rohde* merely held that

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[1] Petitioner does not contend that the authority was not properly delegated in accordance with normal internal operating procedures but only that any delegation by the District Director is necessarily invalid.

a waiver which had not been signed by any representative of the Internal Revenue Service was invalid.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.

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[2] The court in *Lesser* expressed the view that even if the waiver had not been signed by any Internal Revenue officer, it would be valid as a voluntary waiver by the taxpayer. Thus the delegation issue in *Lesser* was *dictum* in any event.